IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.148 OF 2001.

WITH

CIVIL APPLICATION NO.510 OF 2005

Shree Jairam Subraya Ullal : Appellant.

versus

Thane Municipal Corporation

& Anr. : Respondents.

Mr.D.V.Pawar for the appellant.

Mr.R.S.Apte for Respondent No.1.

CORAM : D.G.DESHPANDE,J.

DATED : 7th February 2005.

ORAL ORDER

1. The civil application is for setting aside the order passed by me dismissing the appeal for default on 2nd February 2005 as nobody was present for the appellant on that day. Heard both the sides. Considering the explanation

given, the civil application is allowed. Appeal is restored to file and, by consent, taken up for final hearing.

2. Heard advocates for the appellant and Respondent No.1. Appellant is the original claimant who filed a claim petition before the Motor Accident Claims Tribunal Thane for an accident in which the bus of Respondent No.1 was involved. The accident resulted in three days hospitalisation and two months bed rest. Even the Doctor who was examined by the claimant i.e. Dr.Ajit Palshikar has stated that the appellant had abrasions on right thigh, C.L.W. on right foot ankle and there was injury to his shoulder. He was advised bed rest for fracture. The effect of fracture was for short time and it was not for longer period. The fracture gets cured within six weeks. He further stated that it was a weight bearing bone for which he was advised rest for two months, and in future the appellant be a normal person. In this background of the matter, the trial Court awarded him Rs.11,800/- as compensation including no fault liability amount and hence this appeal.

3. Counsel for Respondent No.1 vehemently urged that there is no permanent disability either total or partial. The appellant has been adequately compensated for two months bed rest considering the manner in which the accident occurred and as deposed by the applicant. The appellant came under the wheel of S.T. bus and was dragged at some distance and then hospitalised. He had to incurred expenses though treatment was taken in Civil Hospital. The counsel for Respondent No.1 submitted that the vehicle was insured. Therefore, considering the circumstances and also looking to the fact that the fracture was weight bearing bone, the appellant would be entitled to Rs.10,000/- more. Hence the order :-

:ORDER:

The appeal is partly allowed.

The appellant to get from Respondent No.1 Rs.10,000/- more with interest at 6% from the date of award of the trial Court.

No order as to costs.

[D.G.DESHPANDE]

07/02/2005 JUDGE.